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May 26, 2011

VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

ENTERED
Office of Proceedings

MAY 26 2011

Part of
Public Record

**Re: Docket No. AB-33 (Sub No. 297X) Union Pacific Railroad Company –
Abandonment Exemption – In Lafayette County, MO.**

Dear Ms. Brown:

This letter will serve as the Reply of Union Pacific Railroad Company ("UP") to the "Petition for Reconsideration" filed May 9, 2011 by "Robert Alan Kemp, D/B/A Nevada Central Railroad" ("Kemp"). The petition requests reconsideration of the Office of Proceedings decision served April 19, 2011, which accepted Kemp's April 11 request to withdraw his notice of intent to file an OFA, and denied as moot Kemp's late filed petition for an extension of time to file an OFA.¹

Mr. Kemp's latest petition is without merit and should be denied:

1. Kemp's filed his original petition to extend the time for filing an OFA on March 29, 2011. At the time Kemp filed this petition, he had already missed two filing deadlines – the March 15 deadline for filing a petition to toll and the March 18 deadline for filing an OFA. His explanation was that that he had expected the Board to enter an order tolling the OFA filing deadline, but had miscalculated the March 15 deadline for filing a petition to toll (Kemp March 29 Petition, p. 3). Since Kemp has participated in other OFA proceedings, it is difficult to understand how he could have made such a miscalculation. Further, even if it had been a miscalculation, Kemp certainly knew by March 29 (the date of his extension petition) that he had missed them. As such, he could easily have submitted one or both filings with his March 29 petition and requested

¹ As noted in the April 19 decision, an OFA in this proceeding was due on March 18, 2011. Under the Board's rules of practice, a request for extension of a filing deadline must be filed "not less than 10 days before the due date", 49 CFR 1104.7(b), which would have been March 8. Kemp did not file his original petition until March 31, 2011, over 3 weeks after the due date for an extension request, and 8 days after the deadline he sought to have extended.

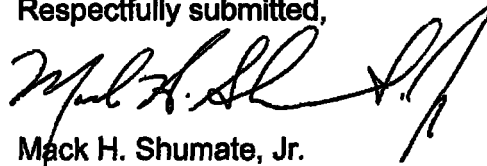


The Honorable Cynthia T. Brown
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May 26, 2011
Page 2

that they be accepted late.. He did not do this. In fact, as of May 26, 2011, he has still not submitted either of them. Instead, he is requesting that the OFA process essentially begin anew. The conclusion is inescapable that his original extension request was simply an attempt to delay the proceeding, probably in the hopes that a delay would create some negotiating leverage.²

2. The basis for Mr. Kemp's May 9 reconsideration request seems to be that UP stated in its April 1 Reply that UP was willing to negotiate a non-OFA acquisition of the line, and that UP later changed its position. Characteristically, Kemp claims that, by changing its position, UP "deliberately and knowingly deceived the Board" and committed a "Fraud" on Kemp. However, UP has already explained (in its May 18 Reply to Kemp's Motion to Strike) why it withdrew its offer to negotiate a non-OFA acquisition. The reason was Kemp's own abusive and threatening conduct with UP personnel. He has no one but himself to blame for this. UP never suggested to Kemp that he should withdraw his notice to file an OFA, or made this a precondition to negotiations for a non-OFA acquisition.

Respectfully submitted,



Mack H. Shumate, Jr.
Senior General Attorney

² Kemp's failure to meet filing deadlines in this proceeding is not an isolated case. The court decision in Kemp v. State of Nevada, 2010 WL 4974569 (D. Nevada, November 29, 2010) (discussed in UP's May 18 Reply to Kemp's Motion to Strike) discusses the multiple filing deadlines Kemp missed in that proceeding. Not only did Kemp miss original filing deadlines, but he requested and obtained multiple extensions of time to make filings, and then failed to make them, Decision pp. 1-3.

CERTIFICATE OF SERVICE

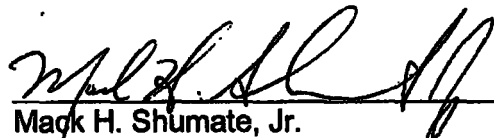
I certify that I have on this date served the foregoing document on the following:

Robert Alan Kemp
d/b/a Nevada Central Railroad
2741 Pinewood Avenue
Henderson, NV 89074

City of Lexington
929 Franklin Avenue
Lexington, MO 64067

Service was made by First Class United States Mail with postage prepaid.

Dated at Chicago, Illinois this 26th day of May, 2011.



Mack H. Shumate, Jr.